

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT**

**NASHVILLE, TENNESSEE**

**January 3, 2006**

**IN RE:**

**JOINT APPLICATION OF MANHATTAN  
TELECOMMUNICATIONS CORPORATION D/B/A  
METROPOLITAN TELECOMMUNICATIONS AND  
BUSINESS PRODUCTIVITY SOLUTIONS, INC. FOR  
AUTHORITY NECESSARY TO COMPLETE A  
TRANSFER OF CONTROL**

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**DOCKET NO.  
05-00230**

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**ORDER APPROVING TRANSFER OF AUTHORITY**

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This matter came before Director Deborah Taylor Tate, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on September 26, 2005 for consideration of the *Joint Application* filed by Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications Corporation ("MetTel") and Business Productivity Solutions, Inc. ("BPS" and, together with MetTel, "Petitioners") for TRA approval of a transfer of authority from BPS to MetTel

**The Joint Application**

MetTel is a privately held Delaware corporation and a wholly owned subsidiary of Metropolitan Telecommunications Holding Company. MetTel currently provides local exchange, domestic interexchange, international and advanced data and Internet services to customers in various states. Neither MetTel nor any of MetTel's subsidiaries currently possess a

certificate of public convenience and necessity (“CCN”) to provide services in the State of Tennessee.<sup>1</sup>

BPS is a privately held Minnesota corporation and a direct, wholly owned subsidiary of Eschelon Operating Company. BPS was granted authority to provide long distance telecommunications services in the State of Tennessee by the TRA in Docket No. 04-00370.<sup>2</sup>

On August 12, 2005, the Petitioners filed the *Joint Application* seeking TRA approval of a transaction through which MetTel will acquire BPS as a result of a Purchase Agreement (the “Agreement”) entered into by MetTel, BPS and Eschelon Operating Company, BPS’s direct parent.<sup>3</sup> Pursuant to the Agreement, MetTel will acquire all stock of BPS. As a result of the transaction, BPS will become a direct, wholly owned subsidiary of MetTel.

The Petitioners maintain that the proposed transaction will be entirely transparent to BPS’s customers. According to the *Joint Application*, the transaction will not result in the transfer of BPS’s operating authority or customers. Additionally, the Petitioners represent that BPS will continue to provide its services to customers under the same name, rates, terms and conditions as it did prior to consummation of the transaction.

According to the *Joint Application*, the transaction serves to promote the public interest because the transaction will benefit competition in the telecommunications market by enabling MetTel to continue to develop as an effective competitor in the State of Tennessee. The

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<sup>1</sup> According to a Data Response received on August 25, 2005, Metropolitan Telecommunications of Tennessee, Inc., a MetTel subsidiary, intends to file an application for a CCN to provide local exchange and interexchange services in Tennessee in the near future.

<sup>2</sup> See *In re Joint Application of GE Business Productivity Solutions, Inc. and Business Productivity Solutions, Inc. for Expedited Approval of (I) the Transfer of Assets, Including the Customer Base, of GE Business Productivity Solutions, Inc. to Business Productivity Solutions, Inc., (II) the Transfer of GE Business Productivity Solutions, Inc.’s Operating Authority in Tennessee to Business Productivity Solutions, Inc., and (III) GE Business Productivity Solutions, Inc.’s Discontinuance of Service in Tennessee*, Docket No. 04-00370, Order Approving Transfer of Authority (April 11, 2005).

<sup>3</sup> According to the *Joint Application*, closing of the transaction is contingent upon receipt by the Petitioners of all required governmental approvals and satisfaction of other standard conditions.

Petitioners maintain that MetTel possesses the financial, managerial and technical qualifications to acquire and operate BPS. The Petitioners assert that the transaction will allow MetTel to combine its financial, technical and market resources and expertise with that of BPS, thereby enhancing MetTel's ability to provide reliable, competitively priced services to customers.

**September 26, 2005 Authority Conference**

The transfer at issue in this docket is governed by Tenn. Code Ann. § 65-4-113 (2004). That provision requires a public utility to obtain TRA approval to transfer its CCN. Tenn. Code Ann. § 65-4-113(a) (2004) reads as follows:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) (2004) provides the standards by which the TRA shall consider an application for transfer of authority as follows:

Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

At the regularly scheduled Authority Conference held on September 26, 2005, the panel noted that the Petitioners had not received final approval of the transaction from the Federal Communications Commission ("FCC"). Thereafter, the panel voted unanimously to approve the *Joint Application* pursuant to a finding of compliance with the requirements of Tenn. Code Ann. § 65-4-113 (2004) contingent on the Petitioners receiving final approval of the transaction from the FCC. The panel ordered the Petitioners to file with the Authority any documentation received from the FCC regarding the transfer.

**IT IS THEREFORE ORDERED THAT:**

1. The proposed indirect transfer of authority from Business Productivity Solutions, Inc. to Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications Corporation as described in the *Joint Application* and discussed herein is approved contingent upon the Petitioners receiving final approval of the transfer from the Federal Communications Commission.

2. Because this transaction is an indirect transfer of authority, Business Productivity Solutions, Inc. will become a direct, wholly owned subsidiary of Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications Corporation and will retain its certificate of public convenience and necessity.

3. The Petitioners shall file with the Authority any documentation received from the Federal Communications Commission regarding the transfer.

  
Deborah Taylor Tate, Director

  
Pat Miller, Director

  
Sara Kyle, Director